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2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

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6 In the Matter of:

7 RUDOLPH W. GIULIANI, Main Case No.
8 Debtor. 23-12055-shl

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11
12 United States Bankruptcy Court
13 One Bowling Green
14 New York, New York

15
16 February 16, 2024
17 11:13 AM

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21 B E F O R E:
22 HON. SEAN H. LANE
23 U.S. BANKRUPTCY JUDGE

24
25 ECRO: ALIANA PERSAUD AND ART TAVAREZ

Doc. #107 Debtor's Letter Requesting Conference

Doc. #108 Memorandum Endorsed Order Regarding Debtor's Letter
Requesting Conference

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RUDOLPH W. GIULIANI

6

1 P R O C E E D I N G S

2 THE COURT: Good morning. This is Judge Sean Lane
3 here in the United States bankruptcy court for the Southern
4 District of New York. We're here for the Rudolph Giuliani
5 Chapter 11 case.

6 There was a request filed by debtor's counsel by a
7 letter of February 13th to ask for a conference dealing -- oh,
8 I'm sorry. I'm sorry. I was muted. See, it gets all of us
9 from time to time one way or the other.

10 Good morning. This is Judge Sean Lane in the United
11 States Bankruptcy Court for the Southern District of New York.
12 And we're here this morning for the Chapter 11 case of Rudolph
13 W. Giuliani.

14 There was a letter filed on the docket February 13th
15 by debtor's counsel seeking to have a conference about motions
16 to retain various law firms in the case that had been discussed
17 in connection with the motions to lift stay that these
18 applications were filed on January 30th for presentment on
19 February 20th with an objection deadline of five days prior.

20 A day after they were filed, we had the hearing on the
21 motion for lift stay which implicated the applications in terms
22 of the question of the source of the funds for the payment of
23 the professionals and the relationships and typical what we
24 call Lar Dan affidavit issues.

25 The letter on February 13th asks for a conference the

RUDOLPH W. GIULIANI

7

1 next on the 14th on the issues that the parties are still
2 working through. My memo endorsed that letter the same day
3 saying that we were not having a conference on the 14th because
4 I really -- the letter didn't identify when the actual deadline
5 was for filing anything in D.C.. And there didn't seem to be
6 that kind of an emergency, particularly given that the time for
7 actually responding had not yet come and gone. And so I set
8 today at 11 o'clock for this conference.

9 So with that, we'll get appearances, starting with
10 counsel for the debtor.

11 MR. FISCHOFF: Yes. Good morning, Your Honor.
12 Berger, Fischoff, Schumer, Wexler & Goodman by Gary Fischoff
13 and --

14 MR. BERGER: Your Honor, Heath Berger from Berger,
15 Fischoff, Schumer, Wexler & Goodman, attorneys for the debtor.
16 Good morning.

17 THE COURT: All right. Good morning. On behalf of
18 the official committee?

19 MR. DUBLIN: Good morning, Your Honor. Phil Dublin,
20 Akin Gump Strauss Hauer & Feld, proposed counsel to the
21 creditors' committee.

22 THE COURT: All right. On behalf of the United States
23 Trustee's Office?

24 MS. SCHWARTZ: Good morning, Your Honor. Andrea
25 Schwartz on behalf of the United States Trustee.

RUDOLPH W. GIULIANI

8

1 THE COURT: All right. Good morning. And on behalf
2 of the Freeman plaintiffs?

3 MR. BURBAGE: Good morning, Your Honor. Jim Burbage
4 of Willkie, Farr & Gallagher, on behalf of the Freeman
5 plaintiffs.

6 THE COURT: All right. Good morning. Anyone else who
7 is here for this matter who wishes to be --

8 MR. GLUCKSMAN: Davidhoff Hutcher Cintron, creditor by
9 James Glucksman.

10 THE COURT: All right. Good morning. Anyone else?

11 MR. SAMUELS: Good morning, Your Honor. Joel Samuels,
12 on behalf of the Dominion parties.

13 THE COURT: All right. Good morning. Anyone else?

14 MR. SIBLEY: Good morning, Your Honor. This is Joe
15 Sibley. I'm proposed special counsel that's, I think, subject
16 of this hearing. So I am present.

17 THE COURT: All right. Thank you very much. Good
18 morning. Anyone else?

19 All right. So let me just start with a preliminary
20 comment. I'm always happy to make myself available to try to
21 resolve things for parties and to move things along and to
22 prevent parties from having to file extensive pleadings that
23 might otherwise be avoided or significantly reduced by virtue
24 of having a conference. That said, there are some limitations
25 to that. And they're the limitations imposed by just good

RUDOLPH W. GIULIANI

9

1 sense.

2 So one is if people are asking for an immediate
3 conference on short notice, I need to know what the driver is
4 because there's a fine line between having a conference that
5 will be helpful and having a conference that can be arguably
6 used as leverage and sort of weaponized. And so I'm a fan of
7 conferences that are helpful. I'm not a fan of conferences or
8 hearings that are somehow trying to be used as leverage. And
9 sometimes it's hard for me to tell the difference. But I look
10 at things like, well, what is the actual emergency? What are
11 the actual dates, drivers, what's going on?

12 and so here obviously with the applications actually
13 on for presentment on the 20th and the not yet come and gone,
14 I -- and not having seen any supplemental declarations on the
15 retention issues that have been discussed on the 31st, it -- I
16 was mystified as to the level of urgency that would require a
17 hearing on the 14th.

18 The other thing is people need to talk to each other.
19 And sometimes I can tell that's happened, sometimes I can't,
20 but it's always going to be a concern of mine. So whenever
21 there's a request like this, I always look at it.

22 And last but not least, I need time to look at things
23 in order to appropriately -- to give you folks the best and
24 most appropriate answer. So I certainly want to give people
25 the maximum amount of time to negotiate and work through

RUDOLPH W. GIULIANI

10

1 issues. But I'm dating myself by referencing the old Johnny
2 Carson Carnac bit where I hold something up to my head and
3 pronounce the answer. I can't do that. And so that's the
4 reason why I said I can't extend a deadline out to 9 a.m. just
5 because I don't know what I'm getting.

6 And as it turns out, I got quite a bit anyway. I got
7 the two supplemental declarations. And frankly, that's sort of
8 what I was waiting for because I thought those were the
9 drivers. And for things like this the perfect shouldn't be the
10 enemy of the good. And let's make some progress. So I didn't
11 really know what there would actually be to talk about with the
12 Court until we saw what those declarations look like. So those
13 were filed this morning at 9:33 and 10:40 at docket 116 and
14 117. That is, the supplemental application for the retention
15 of the Camara Sibley LLC firm as special counsel, that's the
16 one filed at 9:33 which has a number of things with it, the
17 supplemental declaration of Andrew Giuliani and a bunch of
18 attachments, including the information about the funders, that
19 is. the receipts and disbursements and things of that sort.

20 And then a 10:40, I got the supplemental declaration
21 dealing the other funder, James -- is it Menges? Am I saying
22 that correctly?

23 MR. FISCHOFF: Menges, that's right.

24 THE COURT: Menges, okay, all right. So now I sort of
25 have a sense of where we are. And it helps to sort of put some

RUDOLPH W. GIULIANI

11

1 meat on the bones to what I think Ms. Schwartz said in her
2 email to say -- to helpfully sort of give me a status yesterday
3 as to -- we've asked for these things; if we get these things,
4 we think we're cautiously optimistic that we'll be in a good
5 place.

6 So all that said, I just wanted to level set and try
7 to let folks know how I think about these things. I'm not
8 trying to surprise anybody. I'm not trying to make anybody's
9 life more difficult. But it's a very much help-me-to-help-you
10 situation.

11 So with that said, I know that there were concerns. I
12 do have a formal objection and a joinder that was filed to the
13 applications of course. And the objection was by the official
14 committee. They hadn't seen these supplemental declarations
15 yet. In fact, they've had about twenty minutes to look at one
16 of them.

17 So I'm happy to hear from the debtors first, but my
18 thought is that it may make sense to hear from the parties who
19 had raise the concerns in the first instance based on what's
20 been filed. I sort of see the debtors as having spoken with by
21 virtue of their filings that were just made this morning.

22 MR. FISCHOFF: Judge, this is Gary Fischoff for the
23 debtor. If I may, I'd just like to speak for a moment.

24 First of all, I apologize for not putting the date
25 that was of concern.

RUDOLPH W. GIULIANI

12

1 THE COURT: Yeah. Listen, I'm not -- let me let me
2 just make it clear. I don't need apologies. I'm not easily
3 offended. I'm just trying to be practical and let you know how
4 I do things and how we can help things move forward. So all
5 right.

6 MR. FISCHOFF: The date that was a concern was
7 February 20th. And the reason I asked for a conference was not
8 so much for the retentions, although that seemed to become the
9 focus. I want to take a step back. My concern when I filed
10 the letter is the Court had authorized the stay to be modified
11 for certain limited purposes, that is, to file motions, post-
12 judgment motions, and a notice of appeal. And that lifting of
13 the stay which order has been prepared and pretty much agreed
14 to by the parties since shortly after that hearing date was
15 conditioned upon first there being an order --

16 THE COURT: Right.

17 MR. FISCHOFF: -- retention for Sibley and the
18 condition that the Sibley firm had -- were going to seek
19 compensation from third parties and not from the debtor. So we
20 had written commitments from Mr. Sibley that he would only seek
21 payment from the third parties, and if they couldn't pay him,
22 he wouldn't be looking at the debtor for payment. That was
23 unequivocal. We had that --

24 THE COURT: Right, right. But that the hearing, the
25 thought was we need to resolve these issues in order to get the

RUDOLPH W. GIULIANI

13

1 stay lifted in order for things to move forward. And so -- and
2 frankly, there's no better time than now to do that. So I can
3 understand --

4 MR. FISCHOFF: Okay. That's fine.

5 THE COURT: And that's why I took -- I think the
6 different approaches taken by the committee and the U.S.
7 Trustee's Office are both right in the sense that the committee
8 wanted to tee up the issues and say, Judge, this is what we
9 need now and this is what we need to address. And the U.S.
10 Trustee's Office was working the problem from the other end to
11 try to say we're in constant contact about the content of the
12 supplemental declarations that are not yet together but are on
13 their -- in progress. So I get it. I get it. I guess my
14 thought is that a lot of this is within the control of the
15 people or the funders and the debtors. And so, you know,
16 people have to avoid creating their own emergency.

17 So you know, the information -- when I finally read
18 the declarations, the information didn't strike me as
19 particularly surprising or controversial in terms of
20 relationships and assets and who are the control parties and
21 things of that sort. So I mean, if you had asked me and put a
22 gun to my head on the 31st, what sort of stuff do you think
23 we'll end up talking about, we need to talk about in these
24 declarations, it would have been this kind of stuff. So I
25 don't think it's a surprise. So let let's try to avoid fire

RUDOLPH W. GIULIANI

14

1 drills where we can by just getting in front of these issues I
2 guess is my thought.

3 So I understand that -- I understand the sequencing.
4 I checked my notes for it, come out here. And so I'm aware of
5 what we had done and why we had done it and what the flash
6 points were. And we were working towards trying to make this
7 as consensual as possible for lots of good reasons in terms of
8 the case.

9 So Mr. Fischhoff, anything else before I hear from the
10 parties to figure out whether I have any live active
11 objections?

12 MR. FISCHOFF: No. I'll defer for the moment.

13 THE COURT: All right. All right. Let me start with
14 the committee because they have filed papers that are
15 objections. Obviously, I realize that they are -- haven't been
16 superseded by, but they've been two ships passing in the night
17 with the supplemental declarations that were filed this
18 morning. So let me hear from the committee.

19 MR. DUBLIN: Thank you, Your Honor. Again, for the
20 record. Phil Dublin, Akin, Gump, Strauss, Hauer & Feld,
21 proposed counsel to the committee.

22 Your Honor, unfortunately, we still have live
23 disputes. We go through in painstaking detail in our objection
24 the issues that we have and the lack of information that's been
25 provided. Unfortunately, throughout this process, repeated

RUDOLPH W. GIULIANI

15

1 requests to debtor's counsel to get access to information as it
2 relates to the funding sources as well as certain relationships
3 that the Sibley firm has with other parties-in-interest,
4 including Mr. Giuliani's affiliated entities, have gone
5 unanswered.

6 THE COURT: But let me -- so I read the papers, so I
7 understand your view. But the papers are before the
8 supplemental declarations were filed. And certainly there is
9 additional information that was provided. So I did see, for
10 example, in the first one, docket 116, the one filed at 9:30
11 that goes through the receipts of the Giuliani Defense
12 Committee and the itemized disbursements. And it makes certain
13 statements that I think were requested but had not been made in
14 terms of the firm's sole obligation as to representation of the
15 debtor to the exclusion of any other individual, that Giuliani
16 Defense is not a creditor, and it doesn't intend to essentially
17 participate in the case by doing things like bidding on assets.

18 So certainly some boxes have been checked. So let's
19 get down to sort of what the specific issues are that are left.

20 MR. DUBLIN: Well, Your Honor, we do have information
21 in the Giuliani declaration with respect to Giuliani Defense.
22 What we do -- and we have itemized information which is nice to
23 receive, but it's only through the end of the year and is
24 not -- respectfully not the most current information.

25 With respect to the Freedom entity, so Giuliani

RUDOLPH W. GIULIANI

16

1 Freedom, we do not have that information. We have no
2 information with respect to who has made the actual donations.
3 Instead, we have a simple statement that says to the best the
4 declarant's knowledge, that the debtor has not made any
5 contributions. We had asked repeatedly for itemized
6 information so that we could be sure as to where the money has
7 been coming from.

8 And issues with respect to where money comes from has
9 been heightened significantly since the 341 meeting. The
10 debtor stated under oath that he commingles his funds with his
11 businesses. So we don't know where money is going. We don't
12 know who it's coming from. And in order for us to be
13 comfortable that there is no actual conflict or potential for
14 conflict as it relates to that fund, we need access to
15 information as to who the funding sources are. The debtor's
16 counsel told us we're not getting that information, we're not
17 entitled to that information, the trust isn't going to provide
18 us with that information which obviously is not an acceptable
19 answer when we're in a situation where --

20 MR. FISCHOFF: May I --

21 THE COURT: No, no. Listen, people, I'll elicit
22 comments as we go. So otherwise it's too hard to conduct these
23 hearings by Zoom.

24 So what I'd like to do, Mr. Dublin, is take these one
25 at a time so we can just deal with them as they come up because

RUDOLPH W. GIULIANI

17

1 I'm sure you have a very nice long speech. You could address
2 them all in one. But I think then we'd have to go back and
3 unpack them.

4 So let's talk about that one. So what I'd like to do
5 is hear from Ms. Schwartz and then hear from the debtor and
6 then hear from anybody else.

7 So Mr. Dublin, anything else on this particular
8 question? I understand what your comment is. You don't have
9 the corresponding kinds of detail and that's what you're
10 looking for. Anything else on that particular issue?

11 MR. DUBLIN: Obviously, Your Honor, I have a host of
12 issues.

13 THE COURT: No, no.

14 MR. DUBLIN: On this one, as it relates to the Manges
15 declaration, I didn't have a ton of time to spend with it. We
16 did have a partial draft provided to us last night. Obviously,
17 more detail is always better. We feel significantly lacking,
18 given third parties paying for the fees and expenses. There
19 are other declarations, including the Sibley declaration, which
20 is internally inconsistent. But as far as the Manges
21 declaration goes --

22 THE COURT: Yeah. I'd like to --

23 MR. DUBLIN: -- thee primary issue relates to a lack
24 of information.

25 THE COURT: -- take this one at -- I'd like to take it

RUDOLPH W. GIULIANI

18

1 one at a time. So as to the Manges declaration talking about
2 the that kind of detailed information, Ms. Schwartz?

3 MS. SCHWARTZ: Thank you, Your Honor. I just want to
4 say one thing first with respect to your preliminary comments,
5 just so that you are aware, which I think you are, based on
6 what you said, that -- and I think what we've said at prior
7 conferences. It's been, in essence, like pulling teeth to get
8 the information. We provided three rounds of comments to the
9 application, including the Sibley declaration, the Giuliani
10 declaration, and the Menges Declaration. And you now have,
11 like, a third supplemental declaration from Mr. Sibley which
12 includes all the information that we require of all
13 professionals, including the payments within the ninety-day
14 period. He's now explained all the "Giuliani matters" that
15 he's representing other parties in. He's also stated that he's
16 withdrawing as counsel to Mr. Costello who is a principal of
17 creditor Davidson Hutchinson. That was a conflict issue that
18 we had identified. And he's withdrawing as counsel for that.

19 With respect to the two declarations on the funds,
20 Your Honor, the fund that Andrew Giuliani is the president of,
21 that's a PAC. So that is actually filed with the Federal
22 Election Commission. So it was very easy to get the donors and
23 the disbursements because that's all public information. Mr.
24 Dublin's right that it's not anything past that.

25 With respect to Mr. Manges, the Lar Dan affidavit

RUDOLPH W. GIULIANI

19

1 requires that -- essentially that the third-party contributor
2 basically understands that once they give that money to the
3 debtor, that the debtor and the debtor's counsel has absolutely
4 a sole fiduciary duty to the debtor.

5 THE COURT: No, no. I understand that. And I see
6 language. What I'm trying to get is, is your office's position
7 on this specific issue identified by Mr. Dublin because, again,
8 we're going to have to go through one at a time.

9 MS. SCHWARTZ: Yes. I'm --

10 THE COURT: But we need to we need to get there
11 because I'm trying to --

12 MS. SCHWARTZ: Okay. I'm right there.

13 THE COURT: -- direct everybody.

14 MS. SCHWARTZ: I'm right --

15 THE COURT: And if I --

16 MS. SCHWARTZ: But we are --

17 THE COURT: -- doing it to Mr. Bischoff. I did it to
18 Mr. Dublin. I'm going to do it to you.

19 MS. SCHWARTZ: Right.

20 THE COURT: It's just sort of equal --

21 MS. SCHWARTZ: Yes.

22 THE COURT: -- equal treatment. So what what's your
23 view about that?

24 MS. SCHWARTZ: We understood that the concern on the
25 disclosure of who are the donors to that fund was to make sure

RUDOLPH W. GIULIANI

20

1 that they weren't estate assets; therefore, that it wasn't Mr.
2 Giuliani, the debtor, contributing to that fund. And now
3 there's a statement in that declaration that states he did not
4 contribute any of that.

5 THE COURT: Well, I think Mr. Dublin pointed out that
6 it is a -- there's a caveat in there. It says to the best of
7 my knowledge. And --

8 MS. SCHWARTZ: Okay. It does say that.

9 THE COURT: And so let me then turn to Mr. Fischhoff
10 for a second and say, Mr. Fischhoff, can't we do better than
11 that, right? I mean --

12 MR. FISCHOFF: Yes.

13 THE COURT: -- somebody has this information and can
14 check and can swear under oath whether Mr. Giuliani or --
15 either directly or indirectly provided any funds to this. And
16 it doesn't seem to be that complicated.

17 MR. FISCHOFF: Yes. The answer is yes. I will get a
18 declaration from Mr. Giuliani that neither he or his related
19 entities have donated any funds to that entity.

20 THE COURT: And I think it -- I think it should be
21 broad enough to say that he has not directly or indirectly,
22 including through those entities, provided any funding to
23 either of these entities.

24 MR. FISCHOFF: Okay. That's fine. But here's the
25 problem with the Rudy Giuliani Freedom Fund, the one that's

RUDOLPH W. GIULIANI

21

1 administered by Manges. It gets -- that fund gets hundreds of
2 small contributions. One, these people aren't prepared to --

3 THE COURT: I understand that. But again, nobody has
4 dragged them into this bankruptcy. They have put themselves
5 into the bankruptcy somebody's going to fund. And that's all
6 fine. But once you do that, there are certain requirements for
7 that, right? And they're well-worn requirements. And I
8 don't -- I mean, I think any lawyer looking at this --

9 MR. FISCHOFF: Your Honor, what about all the people
10 who donated prior to the bankruptcy? They didn't insert
11 themselves into this litigation. They're small-time people who
12 donated --

13 THE COURT: I'm not asking for their information. I'm
14 asking.

15 MR. FISCHOFF: I --

16 THE COURT: Okay. Mr. Fischhoff, let's not be cute
17 about this, right? You're a smart lawyer. When I read this,
18 it immediately caught my eye where it said to the best of my
19 knowledge, Mr. Giuliani hasn't contributed. I understand why a
20 witness says that, because the witness says I don't know, like,
21 as far as I know, but that's not good enough. And so I'm not
22 asking --

23 MR. FISCHOFF: I don't --

24 THE COURT: -- for the identity of all the small-time
25 contributors.

RUDOLPH W. GIULIANI

22

1 MR. FISCHOFF: I --

2 THE COURT: Let's not -- Mr. Fischoff, when I'm
3 talking, you're not.

4 MR. FISCHOFF: I apologize. Sorry.

5 THE COURT: I'm not asking for the identity of all
6 those people and to drag them into bankruptcy. So let's not
7 make this an issue that it's not, right? It's fairly easy to
8 get a categorical statement from an appropriate witness to say
9 that Mr. Giuliani is not directly or indirectly providing funds
10 to either of these two funders. And that's straightforward and
11 simple under oath. So let's do that.

12 MR. FISCHOFF: I will.

13 THE COURT: All right. Mr. Dublin, next issue.

14 MR. DUBLIN: Your Honor, I'm going to try to avoid the
15 rhetoric as to how we found ourselves in this situation on this
16 date.

17 THE COURT: Well, I appreciate that, because I think
18 if we don't do that, we all may not get to any other business
19 today. So I understand. I've read your papers. I have them
20 all here. I made sure to read them. I read them yesterday,
21 and I read them again this morning. So I got it.

22 MR. DUBLIN: Okay. Needless to say, I'm expecting
23 this is not going to be the most pleasant Chapter 11 case
24 for -- if the debtor is not more forthcoming with information,
25 timely, and is responsive regularly to the creditors.

RUDOLPH W. GIULIANI

23

1 THE COURT: Well, let's -- as you said, let's avoid
2 the rhetoric. Let's get down to brass tacks.

3 MR. DUBLIN: Your Honor, if we get the statement that
4 there's no direct or indirect contribution from the debtor to
5 the fund, we'll address that issue for today. That would not
6 resolve necessarily our issues of discovery in connection with
7 2004 which, as we've said previously, we would tend to seek in
8 the near term of what --

9 THE COURT: That's fine. And no, nobody's saying that
10 this inquiry forecloses any of that inquiry.

11 MR. DUBLIN: Okay. Yeah. Your Honor, with respect to
12 the actual payments for the services that the Sibley firm
13 proposes to provide, there are some internal inconsistencies
14 based on my quick review of the new Sibley declaration. And
15 also in discussions that I had with debtor's counsel last night
16 with respect to the extent to which Mr. Sibley and his firm
17 would seek additional funding with respect to the matters
18 pertaining to the Freeman litigation as it proceeds in the
19 District court with post-trial motions, litigation, notice of
20 appeal, and to the extent thereafter, there is additional
21 litigation with respect to an actual appeal that's ever
22 permitted -- that's permitted to go forward.

23 At various points in the initial retention
24 application, the amended retention application, I haven't had
25 sufficient time to look at the further amended retention

RUDOLPH W. GIULIANI

24

1 application. But I believe in the most recent supplemental
2 declaration, at various points, Mr. Sibley says that he is only
3 going to seek to be compensated 50,000 dollars from the trusts
4 with respect to all matters pertaining to the Freeman
5 litigation on a go-forward basis.

6 THE COURT: Well, I saw your -- I understand that.
7 But I thought the concern was the source of the funding. So
8 that's distinct from what's going to be charged. And for
9 purposes of the lift stay motion, I think the most -- the
10 concern that I understood from the committee and the Freeman
11 plaintiffs was this notion about where the money was coming
12 from. And I did see in paragraph 18 of the supplemental
13 declaration of Joseph Sibley that the firm agrees not to seek
14 payment of any legal fees or costs directly from the debtor,
15 and it will file any application for fees and expenses to be
16 paid from one or the two funds or other third-party funding.

17 I had a problem with the other third-party funding in
18 the sense that I don't know what that means. And so nobody can
19 do any of that without approval because then the Lar Dan
20 affidavit is meaningless. Because it says, well, there could
21 be somebody else who could pop up, and then we're going to run
22 this process again. So I had a problem with that. But I think
23 I understood it to mean if you strike that statement or other
24 third-party funding, that it was going to be an application and
25 the funds were only coming from those two sources. And it goes

RUDOLPH W. GIULIANI

25

1 on to say it won't seek payment from the debtor.

2 So is there something I'm missing in thinking that if
3 that other third-party funding language is struck, that that'll
4 answer the mail for today at least?

5 MR. DUBLIN: So that was one of our issues. And, Your
6 Honor, this becomes a little difficult doing this a little
7 separately from the other retention applications that were
8 supposed to be heard at the same time as this application
9 because all of them contemplate getting paid from these third-
10 party sources at least to some extent. And we don't have a
11 great accounting of what's currently in those trusts. So when
12 we look back at paragraph 14 --

13 THE COURT: But isn't that a problem for the lawyers
14 who are agreeing to the retention? I mean, again, my
15 understanding was that the source of the funding could be the
16 debtor. There were legitimate concerns raised about why that
17 is the case. And so I understand that this is an issue that's
18 popping up in different retentions. But my understanding that
19 this is the most -- this is the time-sensitive one. So
20 we'll -- I'll take success in whatever form I can get. And so
21 if we can get through this one today, then these are on for
22 presentment on the 20th. We can have another hearing if
23 necessary if we can't resolve those today. But again, my
24 question is, doesn't this -- again, getting rid of the other
25 third-party funding language, doesn't the language -- the other

RUDOLPH W. GIULIANI

26

1 language in paragraph 18 solve the problem of the source of the
2 funds?

3 MR. DUBLIN: Well, the source. But it's not just the
4 source, Your Honor. Because when we're looking at estate
5 assets. right, if there are many things that estate assets
6 will be used for. And with respect to the other retention
7 applications, if there are amounts above the 50,000 that may be
8 sought by the Sibley firm in connection with the Freeman
9 litigation, that would further dissipate the --

10 THE COURT: I don't know. That's not the issue that
11 was identified for me. And it's a hypothetical. And if
12 there's no funding to pay for the lawyers, then people will
13 have to come back and seek an amended application or identify
14 other third-party sources. But I don't think that's your role
15 to get in into that question. Why does it matter to you as to
16 how much money there is and when the money will run out?

17 MR. DUBLIN: Because we're looking to maximize the
18 value of the estate, Your Honor, if the parties --

19 THE COURT: Those aren't estate assets. Those are the
20 two party funders.

21 MR. DUBLIN: I understand, Your Honor. But these
22 professionals said they're going to seek funding from those
23 entities. And then if there's not enough money, they're going
24 to come to the estate, not necessarily Sibley.

25 THE COURT: No. That's actually not what it says. It

RUDOLPH W. GIULIANI

27

1 says it will not seek payment from the debtor.

2 MR. DUBLIN: Right, Your Honor. But I'm getting back
3 to the fact that we have issues with the two other retentions
4 as well.

5 THE COURT: No. I'm not hearing anything that -- I
6 think we're going around and around. I'm taking the language
7 in paragraph 18 at face value that the firm will not seek any
8 payment from the debtors. All funds that it will seek will be
9 made by application. And they will all seek to be compensated
10 from one or the other of these funds. And that's it. I am
11 essentially telling the debtor that this language about other
12 third-party funding is right out. It's inappropriate. It's a
13 back door. And I am not approving any application that is
14 conditioned on that language. But other than that, I think
15 it's fine.

16 We have many bridges to cross. We'll burn this
17 particular bridge when we get there. So I'm okay with that.
18 What's your next issue?

19 MR. DUBLIN: Your Honor, I would like that -- the
20 order to provide directly or indirectly from the debtor,
21 looking at the same type of issue with respect to --

22 THE COURT: Yeah.

23 MR. DUBLIN: -- the buyer disclosure.

24 THE COURT: That's a fair point. I think that's a
25 fair point.

RUDOLPH W. GIULIANI

28

1 All right. Any other issues, Mr. Dublin? And again,
2 I recognize that you got these this morning and in one case
3 less than a half an hour before the hearing. So I recognize
4 that that is less than ideal.

5 MR. DUBLIN: Your Honor, I have not had a sufficient
6 time to spend with the proposed retention order as to whether
7 we would have comments with the order itself, ensuring that
8 it's consistent with the items that we're discussing today. So
9 I would like to have an opportunity to review that.

10 THE COURT: That's fair.

11 MR. DUBLIN: We also -- and Your Honor hasn't seen
12 this. But in the agreement that we had as it related to the
13 lift stay order, the debtor had to -- had agreed to provide us
14 the debtor's -- I'm sorry, the committee and the Freeman
15 plaintiffs drafts of the documents that they intended to file
16 within five days prior to the filing. We're already within
17 that period. We haven't seen those documents. To ensure that
18 (audio interference) encompassing the scope of the limited
19 relief from the stay that that Your Honor had indicated that
20 you would approve, we're up against a little bit of a wall
21 there as well. l

22 THE COURT: All right. We should circle back to that
23 before we get off. But as to the retention for the moment, Ms.
24 Schwartz, anything else from your office? And now's the chance
25 to actually take a step back and identify any other issues. I

RUDOLPH W. GIULIANI

29

1 just wanted to not lose the thread before.

2 MS. SCHWARTZ: Yes, I understand that. Thank you,
3 Your Honor.

4 I do think that the order will have to be slightly
5 tweaked to reflect what Your Honor said on the record. So I
6 think it's totally appropriate for Mr. Dublin without a doubt.
7 I mean, we would never -- we would never permit the debtor to
8 submit an order until everybody signed off on it. So that's
9 number one.

10 Number two, Your Honor, from our perspective, what we
11 were ultimately able to pull out from the debtor -- and when I
12 say pull out, I mean -- I didn't see the declaration until it
13 was filed ten minutes before the hearing. But we did think
14 that it met the minimum standard required for retention.
15 Clearly, the committee is going to want to get a lot more
16 information. And they'll be entitled to get that. But we were
17 really looking at it from the perspective of it's not a -- this
18 is not the greatest declaration and everything under the sun.
19 But we wanted to get something done so that the debtor didn't
20 miss its deadline and was able to do what they needed to do to
21 preserve those assets.

22 So I didn't -- I didn't disagree with any of Your
23 Honor's comments. We've got most of the stuff last night or
24 this morning ourselves.

25 THE COURT: Yeah.

RUDOLPH W. GIULIANI

30

1 MS. SCHWARTZ: So --

2 THE COURT: So let me make it clear. I think my
3 earlier comment should have done it, but this is the retention
4 issue. It is not about information generally in the case. I
5 understand there's a 2004 request for information that that is
6 very likely coming. This doesn't impact that.

7 My other observation -- well, two other observations.
8 One is I appreciate everybody sort responding to where I'm
9 trying to go in terms of addressing specific issues. As you
10 know, in this courthouse, we're forced to be very practical
11 people to try to get things done.

12 The third comment is this is an unnecessary fire
13 drill. I don't see any reason why it took this long to get
14 this information. And if this becomes a pattern, there is a
15 risk that when a debtor asks for information or -- I'm sorry,
16 is asking for something to be done and it doesn't meet the
17 requisite transparency and timeliness requirements to allow
18 people to chime in, that the procedural issue will over will
19 take precedence and say we're not doing any of that because
20 people just got the declarations, people just got the
21 information.

22 So when you do that, you're playing with fire. And I
23 don't understand why that was necessary here. We all knew on
24 the 31st what was being asked. And frankly, then getting an
25 email a day for the last three days on various issues, again,

RUDOLPH W. GIULIANI

31

1 that's not going to be the successful way to handle this
2 because it reflects a lack of communication. It reflects just
3 a bad process. So people need to respond promptly. There
4 needs to be communication. There needs to be prompt
5 communication. And we all know -- and I'm sorry, I don't want
6 to be pedantic, but with the bankruptcy you get benefits. They
7 come with obligations. Transparency is the primary obligation.
8 I give this speech all the time. You could write this speech.
9 You all know. You're all practitioners in this court, and you
10 know how it works. So help me to help you. Let's minimize the
11 amount of disputes. And so I'm hoping that as we go along, we
12 won't have a repeat of sort of requests for emergency
13 conferences that look like this one because it's just not --
14 it's just not the way to run a railroad.

15 So here's what I would suggest is we're going to deal
16 with this retention because this is the time-sensitive one.
17 There have been changes that have been identified that need to
18 be made in terms of the source of funding that are addressed in
19 one of the funds. And indeed that that declaration, we need it
20 on the record so that everybody knows what it says. And it
21 doesn't count until it's on the docket. And obviously, you can
22 share drafts to the extent that people want to see what it
23 says, but I think it's pretty clear, directly or indirectly.
24 Somebody knows -- I'm not trying to drag these individuals into
25 bankruptcy court. They're not here. And it's not surprising

RUDOLPH W. GIULIANI

32

1 they're here because we don't need them here. We can address
2 the problem without their involvement.

3 And also, I need the order to say that, however you
4 want to phrase it, whether the language is retracted or the
5 Court is essentially overruling the conditions set forth in
6 paragraph 18 about paying fees from not only the two funds but
7 any other third-party funding. I suspect, and Ms. Schwartz can
8 tell me if I'm wrong, that when you say there's another third
9 party who might fund, then we do the Lar Dan affidavit drill
10 again. That's how it works. So we can't have that in there.
11 And so I'm not going to grant any relief with that condition in
12 there. So you can either strike it from the declaration, you
13 can either make it clear that that's not something that will be
14 done in the context of seeking compensation.

15 So my thought is that the declaration could get on the
16 docket promptly. And remind me what day of the week the 20th
17 is.

18 MR. FISCHOFF: Tuesday.

19 THE COURT: Tuesday. And while that declaration is
20 being prepared, a revised proposed order can be circulated.
21 And then my thought would be to hopefully be in a position late
22 in the day on Monday or Tuesday morning at the very latest to
23 sign the order after reviewing the declaration and also sign
24 the lift stay order. So that would be my intention. I will
25 look at it Monday afternoon if it's all ready to go.

RUDOLPH W. GIULIANI

33

1 MR. BERGER: Thank you, Your Honor.

2 For the record, I just want to just advise the Court
3 that on the other two retentions, the one for Aidala and the
4 one for us, we've requested to adjourn that out because once
5 we resolve hopefully this issue with some Lar Dan affidavits,
6 we could then supplement those two other ones with the new Lar
7 Dan affidavits which I think will be much more consistent with
8 Your Honor's ruling today and the opinions and stuff expressed
9 by the Court.

10 THE COURT: All right. Yeah, no. I think that makes
11 sense. This is the canary in the coal mine. And once we sort
12 of have a go by that this will hopefully make the other
13 retentions easier. And anything else, Mr. Berger?

14 MR. BERGER: That's it, Your Honor. Thank you.

15 THE COURT: All right. So also I'm going to I'm going
16 to take the shot because it's my job to encourage people to
17 voluntarily share information. The committee clearly has a
18 desire for more information. They're going to file a 2004
19 request. We can all go that way, but we don't necessarily need
20 to go that way. So if Mr. Dublin has communicated that there's
21 certain information he would like that should be shared and
22 there's no appropriate substantive objection to it, let's get
23 that information out. Let's get it in progress and so the case
24 can move along more smoothly. Otherwise, the case will get
25 hung up on things like that. And that's just not helpful for

RUDOLPH W. GIULIANI

34

1 anyone: debtor, creditors, the U.S. Trustee's Office, you name
2 it. So let's try to move things along. And if -- I'm not
3 expecting necessarily people to be thrilled about that, but
4 that's the price of doing business here in the Bankruptcy
5 Court. And you can all blame me. That's why I wear the robe.
6 I'm happy to be the person you can point to for that.

7 So with that, anything else today for the committee?

8 MR. DUBLIN: Just that we have to modify the lift stay
9 order given where we are timing wise. And I would expect that,
10 given our prior agreement, we would be receiving drafts of the
11 documentation that they intend to file on the 20th posthaste.

12 THE COURT: All right. That's an appropriate request.
13 And so I don't see any reason why that kind of information
14 shouldn't be shared this afternoon, maybe 2, 3 o'clock along
15 with revised proposed orders.

16 MR. BERGER: Judge, Heath Berger.

17 Just to get things expedited, and I think Your Honor
18 brought it up, instead of getting Mr. Sibley to redo the
19 affidavit, maybe we just be more specific in the order. And
20 this way we can get an order out.

21 THE COURT: Yes. You can fix it in the order. I
22 would agree.

23 MR. HEATH: Right.

24 THE COURT: That's one of the benefit of revising the
25 orders is you can fix those kinds of issues just like we do

RUDOLPH W. GIULIANI

35

1 with confirmation orders when you've got something in the plan,
2 notwithstanding anything else, anywhere else, here's what the
3 rule is. Yes, absolutely. I'm perfectly fine with that
4 approach. And that's why I'm not telling you exactly how to
5 phrase it. I'm sure -- you've got a bunch of smart
6 professionals on the phone. I'm sure you can figure out how to
7 do it.

8 MR. HEATH: Will do, Your Honor. Thank you.

9 THE COURT: All right. Let me ask if there's any
10 other party that needs to be heard this morning.

11 MR. SIBLEY: Your Honor, this is Joe Sibley.

12 THE COURT: Yes.

13 MR. SIBLEY: Your Honor, I'd just like to point out a
14 couple of things. One is the work that's being done to be
15 filed on Tuesday, that is not costing anyone any additional
16 fees. I've already been paid for a flat fee for the work
17 through final judgment of the trial court. So the additional
18 fees would be for the work that would be done in the D.C.
19 circuit, not for this work.

20 THE COURT: All right.

21 MR. SIBLEY: The second issue is my understanding by
22 looking at the previous proposed order was that we would give
23 them notice of our intent to file these things five business
24 days in advance, not the actual draft. I don't have a draft
25 prepared to circulate at this point. The only motion that we

RUDOLPH W. GIULIANI

36

1 plan on filing post-verdict is the Rule 59 motion we're
2 required to file to preserve certain appellate issues. I think
3 all of those issues are known issues because we had to move for
4 a directed verdict on those issues anyway. I can give a sketch
5 of what that's going to entail, but the only thing we're going
6 to do is what we are required to do under the rules to preserve
7 appellate issues. So --

8 THE COURT: All right. Well, I realize that I am not
9 as knowledgeable about your conversations back and forth on
10 these issues. But again, communication is the key. So what I
11 think would be appropriate then to make sure -- again, I don't
12 know what was said and how it was presented. But, Mr. Sibley,
13 if you would be so kind as to respond to any questions the
14 committee might have, I think that's the other way to address
15 that just to get a sketch of what's going to be in there.

16 Again, I don't know what you all talked about and how
17 it was presented. It's not in any order I have, so it's not
18 really within my bailiwick.

19 What I understand the question to be is exactly was
20 whether the scope of the pleadings were going to be consistent
21 with what was represented on the record at the hearing. And so
22 if you can answer that statement, yes, I think that will
23 hopefully give Mr. Dublin at least some comfort before getting
24 off the phone.

25 MR. SIBLEY: I'm happy to do that, Your Honor.

RUDOLPH W. GIULIANI

37

1 THE COURT: All right. All right. Let me ask if
2 there's anything else from any other party.

3 MR. DUBLIN: Your Honor, there's one thing before we
4 go. I think we will need a the further supplemental
5 declaration as it relates to the knowledge of direct or
6 indirect contributions to the trust by the debtor.

7 THE COURT: Yeah, I think that was what was
8 contemplated. I think that's right. We're expecting one
9 declaration and a couple of revised orders.

10 MR. DUBLIN: Yes, Your Honor.

11 THE COURT: I think what my comment earlier about is
12 that I didn't counsel to provide a revised declaration simply
13 to strike the "or other third-party funding" language, that
14 that issue can be addressed in the order.

15 MR. DUBLIN: Thank you, Your Honor.

16 THE COURT: All right. Thank you.

17 MR. HEATH: One last thing just administrative wise.

18 THE COURT: Sure.

19 MR. HEATH: If we're adjourning at the presentment on
20 the Aidala and the Berger Fischhoff retentions, perhaps the
21 Court wants to tell us the date so we can --

22 THE COURT: Yeah, that's an excellent idea to do that
23 now so everybody's on the same page. How far out were people
24 contemplating going with that? So I think it was scheduled for
25 the 20th.

RUDOLPH W. GIULIANI

38

1 MR. HEATH: Yeah. Let's make it the -- I mean, I'm
2 just looking at my calendar the 20th. How about we make it the
3 29th which is the last day of February with objections five
4 days before that? No, you we should -- I'm thinking out loud.
5 Maybe we should move to --

6 THE COURT: So I will say I have hotly contested mega
7 case confirmation starting on the 26th. I don't know the
8 extent of how long that's going to take, but I am trying to
9 avoid giving out dates during that week just because I don't
10 want to inconvenience you all and have you wait around. So if
11 it doesn't do any harm and there are no impending deadlines
12 that would be implicated, my suggestion would be to go with
13 March 5th.

14 MR. HEATH: Okay. And the objections five days before
15 that day?

16 THE COURT: Does that work for folks?

17 MR. DUBLIN: Yes, Your Honor.

18 MS. SCHWARTZ: Works for the U.S. Trustee, Your Honor.

19 THE COURT: All right.

20 MR. DUBLIN: I would hope that based on today's
21 dialog, Your Honor, that we'd be able to resolve issues with
22 the other retentions that we don't need to bother you with a
23 hearing, but we'll see how that goes.

24 THE COURT: All right.

25 MR. HEATH: We are good with that also, Your Honor.

RUDOLPH W. GIULIANI

39

1 THE COURT: From your lips to God's ears. All right.
2 All right. Thank you very much. And unless anybody has
3 anything else, we're adjourned. Thank you very much for
4 everybody's flexibility in dealing with a developing situation
5 in terms of the declarations this morning. I appreciate it.
6 And I will see you all no doubt soon. Thank you.

7 IN UNISON: Thank you.

8 (Whereupon these proceedings were concluded at 12:03 PM)

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C E R T I F I C A T I O N

I, Michael Drake, certify that the foregoing transcript is a true and accurate record of the proceedings.



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Date: February 19, 2024

February 16, 2024

A	agree (1) 34:22	approval (1) 24:19	benefits (1) 31:6	call (1) 6:24
	agreed (2) 12:13;28:13	approve (1) 28:20	Berger (10) 7:12,14,14,14;33:1, 13,14;34:16,16;37:20	Camara (1) 10:15
able (3) 29:11;20;38:21	agreeing (1) 25:14	approving (1) 27:13	best (4) 9:23;16:3;20:6; 21:18	can (30) 9:5,19;12:4;13:2; 14:1;16:25;20:13,14; 24:18;25:20,21,22; 31:21;32:1,7,12,13, 20;33:19,24;34:5,6, 20,21,25;35:6;36:4, 22;37:14,21
above (1) 26:7	agreement (2) 28:12;34:10	arguably (1) 9:5	better (3) 13:2;17:17;20:10	canary (1) 33:11
absolutely (2) 19:3;35:3	agrees (1) 24:13	around (3) 27:6,6;38:10	bidding (1) 15:17	Carnac (1) 10:2
acceptable (1) 16:18	Aidala (2) 33:3;37:20	ArShaye (1) 4:3	Bischoff (1) 19:17	Carson (1) 10:2
access (2) 15:1;16:14	AKIN (3) 4:11;7:20;14:20	assets (7) 13:20;15:17;20:1; 26:5,5,19;29:21	bit (3) 10:2,6;28:20	case (12) 6:5,12,16;14:8; 15:17;22:23;25:17; 28:2;30:4;33:23,24; 38:7
accounting (1) 25:11	allow (1) 30:17	attachments (1) 10:18	blame (1) 34:5	caught (1) 21:18
active (1) 14:10	along (5) 8:21;31:11;33:24; 34:2,14	Attorneys (5) 4:3,12;5:3,11;7:15	bones (1) 11:1	cautiously (1) 11:4
actual (8) 7:4;9:10,11;16:2, 13;23;12,21;35:24	although (1) 12:8	audio (1) 28:18	both (1) 13:7	caveat (1) 20:6
actually (6) 7:7;9:12;10:11; 18:21;26:25;28:25	always (4) 8:20;9:20,21;17:17	authorized (1) 12:10	bother (1) 38:22	certain (6) 12:11;15:2,12;21:6; 33:21;36:2
additional (5) 15:9;23:17,20; 35:15,17	amended (3) 23:24,25;26:13	available (1) 8:20	Boulevard (1) 5:12	certainly (3) 9:24;15:8,18
address (5) 13:9;17:1;23:5; 32:1;36:14	amount (2) 9:25;31:11	Avenue (2) 4:5,5:4	Bowling (1) 4:22	chance (1) 28:24
addressed (2) 31:18;37:14	amounts (1) 26:7	avoid (5) 13:16,25;22:14; 23:1;38:9	boxes (1) 15:18	changes (1) 31:17
addressing (1) 30:9	ANDREA (2) 4:25;7:24	avoided (1) 8:23	brass (1) 23:2	Chapter (3) 6:5,12;22:23
adjoin (1) 33:4	Andrew (2) 10:17;18:20	aware (2) 14:4;18:5	bridge (1) 27:17	charged (1) 24:8
adjoined (1) 39:3	Angeles (1) 5:14	B	bridges (1) 27:16	check (1) 20:14
adjourning (1) 37:19	apologies (1) 12:2		broad (1) 20:21	checked (2) 14:4;15:18
administered (1) 21:1	apologize (2) 11:24;22:4	back (9) 12:9;17:2;25:12; 26:13;27:2,13;28:22, 25;36:9	brought (1) 34:18	chime (1) 30:18
administrative (1) 37:17	appeal (3) 12:12;23:20,21	bad (1) 31:3	Bryant (1) 4:14	CINTRON (3) 5:2,3;8:8
advance (1) 35:24	appearances (1) 7:9	balliwick (1) 36:18	BUCHALTER (1) 5:10	circle (1) 28:22
advise (1) 33:2	appellate (2) 36:2,7	bankruptcy (9) 6:3,11;21:4,5,10; 22:6;31:6,25;34:4	bunch (2) 10:17;35:5	circuit (1) 35:19
affidavit (5) 6:24;18:25;24:20; 32:9;34:19	application (11) 10:14;18:9;23:24, 24:24;1,15,24;25:8; 26:13;27:9,13	based (4) 11:19;18:5;23:14; 38:20	BURBAGE (3) 4:8;8:3,3	circulate (1) 35:25
affidavits (2) 33:5,7	applications (6) 6:18,21;9:12;11:13; 25:7;26:7	basically (1) 19:2	burn (1) 27:16	circulated (1) 32:20
affiliated (1) 15:4	appreciate (3) 22:17;30:8;39:5	basis (1) 24:5	business (3) 22:18;34:4;35:23	clear (4) 12:2;30:2;31:23; 32:13
afternoon (2) 32:25;34:14	approach (1) 35:4	become (1) 12:8	businesses (1) 16:11	
Again (14) 14:19;19:7;21:3; 22:21;24:22;25:14, 23,24;28:1;30:25; 32:10;36:10,11,16	approaches (1) 13:6	becomes (2) 25:6;30:14	buyer (1) 27:23	
against (1) 28:20	appropriate (6) 9:24;22:8;29:6; 33:22;34:12;36:11	behalf (6) 7:17,22,25;8:1,4,12	C	
	appropriately (1) 9:23	benefit (1) 34:24		

February 16, 2024

<p>Clearly (2) 29:15;33:17</p> <p>coal (1) 33:11</p> <p>comfort (1) 36:23</p> <p>comfortable (1) 16:13</p> <p>coming (5) 16:7,12;24:11,25; 30:6</p> <p>comings (1) 16:10</p> <p>comment (5) 8:20;17:8;30:3,12; 37:11</p> <p>comments (5) 16:22;18:4,8;28:7; 29:23</p> <p>Commission (1) 18:22</p> <p>commitments (1) 12:20</p> <p>Committee (16) 4:12;7:18,21;11:14; 13:6,7;14:14,18,21; 15:12;24:10;28:14; 29:15;33:17;34:7; 36:14</p> <p>communicated (1) 33:20</p> <p>communication (4) 31:2,4,5;36:10</p> <p>compensated (2) 24:3;27:9</p> <p>compensation (2) 12:19;32:14</p> <p>complicated (1) 20:16</p> <p>concern (7) 9:20;11:25;12:6,9; 19:24;24:7,10</p> <p>concerns (3) 11:11,19;25:16</p> <p>concluded (1) 39:8</p> <p>condition (2) 12:18;32:11</p> <p>conditioned (2) 12:15;27:14</p> <p>conditions (1) 32:5</p> <p>conduct (1) 16:22</p> <p>conference (10) 6:7,15,25;7:3,8; 8:24;9:3,4,5;12:7</p> <p>conferences (4) 9:7,7;18:7;31:13</p> <p>confirmation (2) 35:1;38:7</p> <p>conflict (3) 16:13,14;18:17</p>	<p>connection (3) 6:17;23:6;26:8</p> <p>consensual (1) 14:7</p> <p>consistent (3) 28:8;33:7;36:20</p> <p>constant (1) 13:11</p> <p>contact (1) 13:11</p> <p>contemplate (1) 25:9</p> <p>contemplated (1) 37:8</p> <p>contemplating (1) 37:24</p> <p>content (1) 13:11</p> <p>contested (1) 38:6</p> <p>context (1) 32:14</p> <p>contribute (1) 20:4</p> <p>contributed (1) 21:19</p> <p>contributing (1) 20:2</p> <p>contribution (1) 23:4</p> <p>contributions (3) 16:5;21:2;37:6</p> <p>contributor (1) 19:1</p> <p>contributors (1) 21:25</p> <p>control (2) 13:14,20</p> <p>controversial (1) 13:19</p> <p>conversations (1) 36:9</p> <p>CORPORATION (1) 5:10</p> <p>correctly (1) 10:22</p> <p>corresponding (1) 17:9</p> <p>Costello (1) 18:16</p> <p>costing (1) 35:15</p> <p>costs (1) 24:14</p> <p>counsel (14) 6:6,15;7:10,20; 8:15;10:15;14:21; 15:1;16:16;18:16,18; 19:3;23:15;37:12</p> <p>count (1) 31:21</p> <p>couple (2) 35:14;37:9</p>	<p>course (1) 11:13</p> <p>COURT (86) 6:2,3,11;7:17,22; 8:1,6,10,13,17;10:12; 24:12;1,10,16,24; 13:5;14:13;15:6; 16:21;17:13,22,25; 19:5,10,13,15,17,20, 22;20:5,9,13,20;21:3, 13,16,24;22:2,5,13, 17;23:1,9,19;24:6; 25:13;26:10,19,25; 27:5,22,24;28:10,22; 29:25;30:2;31:9,25; 32:5,19;33:2,9,10,15; 34:5,12,21,24;35:9, 12,17,20;36:8;37:1,7, 11,16,18,21,22;38:6, 16,19,24;39:1</p> <p>courthouse (1) 30:10</p> <p>creating (1) 13:16</p> <p>creditor (3) 8:8;15:16;18:17</p> <p>Creditors (3) 4:13;22:25;34:1</p> <p>creditors' (1) 7:21</p> <p>cross (1) 27:16</p> <p>current (1) 15:24</p> <p>currently (1) 25:11</p> <p>cute (1) 21:16</p>	<p>DC (2) 7:5;35:18</p> <p>deadline (4) 6:19;7:4;10:4; 29:20</p> <p>deadlines (1) 38:11</p> <p>deal (2) 16:25;31:15</p> <p>dealing (3) 6:7;10:21;39:4</p> <p>debtor (28) 7:10,15;11:23; 12:19,22;15:15;16:4, 10;17:5;19:3,3,4; 20:2;22:24;23:4; 24:14;25:1,16;27:1, 11,20;28:13;29:7,11, 19;30:15;34:1;37:6</p> <p>debtors (4) 11:17,20;13:15; 27:8</p> <p>debtor's (7) 6:6,15;15:1;16:15; 19:3;23:15;28:14</p> <p>declarant's (1) 16:4</p> <p>declaration (26) 10:17,20;15:21; 17:15,19,21;18:1,9, 10,10,11;20:3,18; 23:14;24:2,13;29:12, 18;31:19;32:12,15,19, 23;37:5,9,12</p> <p>declarations (13) 9:14;10:7,12;11:14; 13:12,18,24;14:17; 15:8;17:19;18:19; 30:20;39:5</p> <p>Defense (3) 15:11,16,21</p> <p>defer (1) 14:12</p> <p>DEPARTMENT (1) 4:20</p> <p>desire (1) 33:18</p> <p>detail (3) 14:23;17:9,17</p> <p>detailed (1) 18:2</p> <p>developing (1) 39:4</p> <p>dialog (1) 38:21</p> <p>difference (1) 9:9</p> <p>different (2) 13:6;25:18</p> <p>difficult (2) 11:9;25:6</p> <p>direct (3) 19:13;23:4;37:5</p>	<p>directed (1) 36:4</p> <p>directly (6) 20:15,21;22:9; 24:14;27:20;31:23</p> <p>disagree (1) 29:22</p> <p>disbursements (3) 10:19;15:12;18:23</p> <p>disclosure (2) 19:25;27:23</p> <p>discovery (1) 23:6</p> <p>discussed (2) 6:16;9:15</p> <p>discussing (1) 28:8</p> <p>discussions (1) 23:15</p> <p>disputes (2) 14:23;31:11</p> <p>dissipate (1) 26:9</p> <p>distinct (1) 24:8</p> <p>District (3) 6:4,11;23:19</p> <p>docket (5) 6:14;10:13;15:10; 31:21;32:16</p> <p>documentation (1) 34:11</p> <p>documents (2) 28:15,17</p> <p>dollars (1) 24:3</p> <p>Dominion (2) 5:11;8:12</p> <p>donated (3) 20:19;21:10,12</p> <p>donations (1) 16:2</p> <p>done (9) 14:5,5;29:19;30:3, 11,16;32:14;35:14,18</p> <p>donors (2) 18:22;19:25</p> <p>door (1) 27:13</p> <p>doubt (2) 29:6;39:6</p> <p>down (2) 15:19;23:2</p> <p>draft (3) 17:16;35:24,24</p> <p>drafts (3) 28:15;31:22;34:10</p> <p>drag (2) 22:6;31:24</p> <p>dragged (1) 21:4</p> <p>drill (2) 30:13;32:9</p>
--	--	--	---	---

February 16, 2024

drills (1) 14:1 driver (1) 9:3 drivers (2) 9:11;10:9 DUBLIN (38) 4:17;7:19,19;14:19, 20;15:20;16:24;17:7, 11,14,23;19:7,18; 20:5;22:13,14,22; 23:3,11;25:5;26:3,17, 21;27:2,19,23;28:1,5, 11;29:6;33:20;34:8; 36:23;37:3,10,15; 38:17,20 Dublin's (1) 18:24 during (1) 38:9 duty (1) 19:4	20:21;21:21;26:23 ensure (1) 28:17 ensuring (1) 28:7 entail (1) 36:5 entities (5) 15:4;20:19,22,23; 26:23 entitled (2) 16:17;29:16 entity (2) 15:25;20:19 equal (2) 19:20,22 ESQ (5) 4:8,17,25;5:7,16 essence (1) 18:7 essentially (4) 15:16;19:1;27:11; 32:5 estate (6) 20:1;26:4,5,18,19, 24 everybody (4) 19:13;29:8;30:8; 31:20 everybody's (2) 37:23;39:4 exactly (2) 35:4;36:19 example (1) 15:10 excellent (1) 37:22 exclusion (1) 15:15 expect (1) 34:9 expecting (3) 22:22;34:3;37:8 expedited (1) 34:17 expenses (2) 17:18;24:15 explained (1) 18:14 expressed (1) 33:8 extend (1) 10:4 extensive (1) 8:22 extent (5) 23:16,20;25:10; 31:22;38:8 eye (1) 21:18	face (1) 27:7 fact (2) 11:15;27:3 fair (3) 27:24,25;28:10 fairly (1) 22:7 fan (2) 9:6,7 far (3) 17:20;21:21;37:23 FARR (2) 4:2;8:4 February (6) 6:7,14,19,25;12:7; 38:3 Federal (1) 18:21 fee (1) 35:16 feel (1) 17:17 fees (6) 17:18;24:14,15; 32:6;35:16,18 FELD (3) 4:11;7:20;14:20 fiduciary (1) 19:4 figure (2) 14:10;35:6 file (8) 8:22;12:11;24:15; 28:15;33:18;34:11; 35:23;36:2 filed (16) 6:6,14,18,20;10:13, 16;11:12,20;12:9; 14:14,17;15:8,10; 18:21;29:13;35:15 filing (3) 7:5;28:16;36:1 filings (1) 11:21 final (1) 35:17 finally (1) 13:17 fine (7) 9:4;13:4;20:24; 21:6;23:9;27:15;35:3 fire (3) 13:25;30:12,22 firm (8) 10:15;12:18;15:3; 23:12,16;24:13;26:8; 27:7 firms (1) 6:16 firm's (1) 15:14 first (6)	11:17,19,24;12:15; 15:10;18:4 Fischhoff (2) 21:16;37:20 FISCHOFF (26) 7:11,12,12,15; 10:23;11:22,22;12:6, 17;13:4;14:9,12; 16:20;20:9,10,12,17, 24;21:9,15,23;22:1,2, 4,12;32:18 five (5) 6:19;28:16;35:23; 38:3,14 fix (2) 34:21,25 flash (1) 14:5 flat (1) 35:16 flexibility (1) 39:4 focus (1) 12:9 folks (3) 9:23;11:7;38:16 forced (1) 30:10 forecloses (1) 23:10 form (1) 25:20 formal (1) 11:12 forth (2) 32:5;36:9 forthcoming (1) 22:24 forward (3) 12:4;13:1;23:22 found (1) 22:15 frankly (3) 10:7;13:2;30:24 Freedom (3) 15:25;16:1;20:25 Freeman (8) 4:3;8:2,4;23:18; 24:4,10;26:8;28:14 front (1) 14:1 fund (9) 16:14;18:20;19:25; 20:2,25;21:1,5;23:5; 32:9 funder (1) 10:21 funders (4) 10:18;13:15;22:10; 26:20 funding (17) 15:2;16:15;20:22; 23:17;24:7,16,17,24;	25:3,15,25;26:12,22; 27:12;31:18;32:7; 37:13 funds (13) 6:22;16:10;18:19; 20:15,19;22:9;24:16, 25;26:2;27:8,10; 31:19;32:6 further (3) 23:25;26:9;37:4
E			G	
earlier (2) 30:3;37:11 ears (1) 39:1 easier (1) 33:13 easily (1) 12:2 easy (2) 18:22;22:7 either (5) 20:15,23;22:10; 32:12,13 Election (1) 18:22 elicit (1) 16:21 else (16) 8:6,10,13,18;14:9; 17:6,7,10;24:21; 28:24;33:13;34:7; 35:2,2;37:2;39:3 email (2) 11:2;30:25 emergency (4) 7:6;9:10;13:16; 31:12 encompassing (1) 28:18 encourage (1) 33:16 end (3) 13:10,23;15:23 endorsed (1) 7:2 enemy (1) 10:10 enough (3)		GALLAGHER (2) 4:2;8:4 Gary (2) 7:12;11:22 generally (1) 30:4 gets (3) 6:8;21:1,1 Giuliani (16) 6:4,13;10:17;15:11, 15,21,21,25;18:9,20; 20:2,14,18,25;21:19; 22:9 Giuliani's (1) 15:4 given (4) 7:6;17:18;34:9,10 giving (1) 38:9 GLUCKSMAN (3) 5:7;8:8,9 God's (1) 39:1 goes (4) 15:11;17:21;24:25; 38:23 go-forward (1) 24:5 Good (21) 6:2,10;7:11,16,17, 19,24;8:1,3,6,10,11, 13,14,17,25;10:10; 11:4;14:7;21:21; 38:25 Goodman (2) 7:12,15 grant (1) 32:11 great (1) 25:11 greatest (1) 29:18 Green (1) 4:22 guess (2) 13:13;14:2 Guiliani (1) 18:14 GUMP (3) 4:11;7:20;14:20		
	F			

February 16, 2024

gun (1) 13:22	21:25 Honor's (2) 29:23;33:8	inconsistent (1) 17:20	12:25;13:8;14:1,24; 15:19;16:8;17:12; 23:6;25:5;27:3;28:1, 25;30:9,25;34:25; 36:2,3,3,4,7,10;38:21	lacking (1) 17:17
H	hope (1) 38:20	inconvenience (1) 38:10	23:6;25:5;27:3;28:1, 25;30:9,25;34:25; 36:2,3,3,4,7,10;38:21	Lane (2) 6:2,10
half (1) 28:3	hopefully (4) 32:21;33:5,12; 36:23	indeed (1) 31:19	itemized (3) 15:12,22;16:5	language (10) 19:6;25:3,25,25; 26:1;27:6,11,14;32:4; 37:13
handle (1) 31:1	hoping (1) 31:11	indicated (1) 28:19	items (1) 28:8	Lar (6) 6:24;18:25;24:19; 32:9;33:5,6
happened (1) 9:19	host (1) 17:11	indirect (2) 23:4;37:6	J	last (7) 9:22;17:16;23:15; 29:23;30:25;37:17; 38:3
happy (4) 8:20;11:17;34:6; 36:25	hotly (1) 38:6	indirectly (5) 20:15,21;22:9; 27:20;31:23	JAMES (4) 4:8;5:7;8:9;10:21	late (1) 32:21
hard (2) 9:9;16:22	hour (1) 28:3	individual (1) 15:15	January (1) 6:18	latest (1) 32:22
harm (1) 38:11	hundreds (1) 21:1	individuals (1) 31:24	Jim (1) 8:3	law (1) 6:16
HAUER (3) 4:11;7:20;14:20	hung (1) 33:25	information (35) 10:18;13:17,18; 14:24;15:1,9,20,22, 24;16:1,2,6,15,16,17, 18;17:24;18:2,8,12, 23;20:13;21:13; 22:24;29:16;30:4,5, 14,15,21;33:17,18,21, 23;34:13	job (1) 33:16	lawyer (2) 21:8,17
head (2) 10:2;13:22	HUTCHER (3) 5:2,3;8:8		Joe (2) 8:14;35:11	lawyers (2) 25:13;26:12
hear (7) 11:17,18;14:9,18; 17:5,5,6	Hutchinson (1) 18:17		JOEL (2) 5:16;8:11	least (4) 9:22;25:4,10;36:23
heard (2) 25:8;35:10	hypothetical (1) 26:11	initial (1) 23:23	Johnny (1) 10:1	left (1) 15:19
hearing (11) 6:20;8:16;9:17; 12:14,24;25:22;27:5; 28:3;29:13;36:21; 38:23	I	inquiry (2) 23:10,10	joinder (1) 11:12	legal (1) 24:14
hearings (2) 9:8;16:23	idea (1) 37:22	insert (1) 21:10	Joseph (1) 24:13	legitimate (1) 25:16
Heath (9) 7:14;34:16,23;35:8; 37:17,19;38:1,14,25	ideal (1) 28:4	instance (1) 11:19	Judge (5) 6:2,10;11:22;13:8; 34:16	less (2) 28:3,4
heightened (1) 16:9	identified (4) 18:18;19:7;26:11; 31:17	Instead (2) 16:3;34:18	judgment (2) 12:12;35:17	letter (6) 6:7,14,25;7:2,4; 12:10
help (3) 12:4;31:10,10	identify (3) 7:4;26:13;28:25	intend (2) 15:16;34:11	JUSTICE (1) 4:20	level (2) 9:16;11:6
help-me-to-help-you (1) 11:9	identity (2) 21:24;22:5	intended (1) 28:15	K	leverage (2) 9:6,8
helps (1) 10:25	immediate (1) 9:2	intent (1) 35:23	key (1) 36:10	life (1) 11:9
here's (3) 20:24;31:15;35:2	immediately (1) 21:18	intention (1) 32:24	kind (5) 7:6;13:24;18:2; 34:13;36:13	lift (6) 6:17,21;24:9;28:13; 32:24;34:8
hold (1) 10:2	impact (1) 30:6	interference (1) 28:18	kinds (2) 17:9;34:25	lifted (1) 13:1
Honor (43) 7:11,14,19,24;8:3, 11,14;14:19,22; 15:20;17:11;18:3,20; 21:9;22:14;23:3,11; 25:6;26:4,18,21;27:2, 19;28:5,11,19;29:3,5, 10;33:1,14;34:17; 35:8,11,13;36:25; 37:3,10,15;38:17,18,	impending (1) 38:11	internal (1) 23:13	knew (1) 30:23	lifting (1) 12:12
	implicated (2) 6:21;38:12	internally (1) 17:20	knowledge (4) 16:4;20:7;21:19; 37:5	likely (1) 30:6
	imposed (1) 8:25	into (6) 21:4,5,11;22:6; 26:15;31:24	knowledgeable (1) 36:9	limitations (2) 8:24,25
	inappropriate (1) 27:12	involvement (1) 32:2	known (1) 36:3	limited (2) 12:11;28:18
	Inc (1) 5:11	issue (16) 17:10,23;18:17; 19:7;22:7,13;23:5; 25:17;26:10;27:18, 21;30:4,18;33:5; 35:21;37:14	knows (2) 31:20,24	line (1) 9:4
	includes (1) 18:12	issues (26) 6:24;7:1;9:15;10:1;	L	lips (1) 39:1
	including (6) 10:18;15:4;17:19; 18:9,13;20:22		lack (3) 14:24;17:23;31:2	Listen (2) 12:1;16:21
	inconsistencies (1) 23:13			

February 16, 2024

litigation (6) 21:11;23:18,19,21; 24:5;26:9 little (3) 25:6,6;28:20 live (2) 14:10,22 LLC (1) 10:15 LLP (4) 4:2,11;5:2,3 long (3) 17:1;30:13;38:8 look (9) 9:9,21,22;10:12; 11:15;23:25;25:12; 31:13;32:25 looking (9) 12:22;17:10;21:8; 26:4,17;27:21;29:17; 35:22;38:2 Los (1) 5:14 lose (1) 29:1 lot (2) 13:14;29:15 lots (1) 14:7 loud (1) 38:4	24:20 means (1) 24:18 meat (1) 11:1 meet (1) 30:16 meeting (1) 16:9 mega (1) 38:6 memo (1) 7:2 Menges (2) 10:21;18:10 met (1) 29:14 might (3) 8:23;32:9;36:14 mine (2) 9:20;33:11 minimize (1) 31:10 minimum (1) 29:14 minutes (2) 11:15;29:13 miss (1) 29:20 missing (1) 25:2 modified (1) 12:10 modify (1) 34:8 moment (3) 11:23;14:12;28:23 Monday (2) 32:22,25 money (8) 16:6,8,11;19:2; 24:11;26:16,16,23 more (8) 11:9;17:17;22:24; 29:15;33:7,18,24; 34:19 morning (25) 6:2,10,12;7:11,16, 17,19,24;8:1,3,6,10, 11,13,14,18;10:13; 11:21;14:18;22:21; 28:2;29:24;32:22; 35:10;39:5 Moss (1) 4:4 most (7) 9:24;15:24;22:23; 24:1,9;25:19;29:23 motion (4) 6:21;24:9;35:25; 36:1 motions (5) 6:15,17;12:11,12;	23:19 move (7) 8:21;12:4;13:1; 33:24;34:2;36:3;38:5 much (8) 8:17;11:9;12:8,13; 26:16;33:7;39:2,3 muted (1) 6:8 myself (2) 8:20;10:1 mystified (1) 9:16	24:11 notwithstanding (1) 35:2 now's (1) 28:24 number (3) 10:16;29:9,10 NY (4) 4:6,15,23;5:5	33:8 opportunity (1) 28:9 optimistic (1) 11:4 order (23) 9:23;12:13,15,25; 13:1;16:12;27:20; 28:6,7,13;29:4,8;32:3, 20,23,24;34:9,19,20, 21;35:22;36:17;37:14 orders (4) 34:15,25;35:1;37:9 otherwise (3) 8:23;16:22;33:24 ourselves (2) 22:15;29:24 out (17) 10:4,6;14:4,10; 20:5;26:16;27:12; 29:11,12;33:4,23; 34:20;35:6,13;37:23; 38:4,9 over (1) 30:18 overruling (1) 32:5 own (1) 13:16
M		N	O	
mail (1) 25:4 makes (2) 15:12;33:10 Manges (7) 10:23,24;17:14,20; 18:1,25;21:1 many (2) 26:5;27:16 March (1) 38:13 matter (2) 8:7;26:15 matters (3) 18:14;23:17;24:4 maximize (1) 26:17 maximum (1) 9:25 may (5) 11:18,23;16:20; 22:18;26:7 maybe (3) 34:14,19;38:5 mean (8) 13:21;20:11;21:8; 24:23;25:14;29:7,12; 38:1 meaningless (1)		name (1) 34:1 near (1) 23:8 necessarily (4) 23:6;26:24;33:19; 34:3 necessary (2) 25:23;30:23 need (19) 9:3,18,22;12:2,25; 13:9,9,23;16:14; 19:10,10;31:3,17,19; 32:1,3;33:19;37:4; 38:22 needed (1) 29:20 Needless (1) 22:22 needs (3) 31:4,4,35:10 negotiate (1) 9:25 neither (1) 20:18 New (8) 4:6,15,23;5:5;6:4, 11;23:14;33:6 next (3) 7:1;22:13;27:18 nice (2) 15:22;17:1 night (4) 14:16;17:16;23:15; 29:23 ninety-day (1) 18:13 nobody (2) 21:3;24:18 nobody's (1) 23:9 notes (1) 14:4 notice (4) 9:3;12:12;23:19; 35:23 notion (1)	oath (3) 16:10;20:14;22:11 objection (5) 6:19;11:12,13; 14:23;33:22 objections (4) 14:11,15;38:3,14 obligation (2) 15:14;31:7 obligations (1) 31:7 observation (1) 30:7 observations (1) 30:7 obviously (6) 9:12;14:15;16:18; 17:11,16;31:21 o'clock (2) 7:8;34:14 off (3) 28:23;29:8;36:24 offended (1) 12:3 Office (6) 4:21;7:23;13:7,10; 28:24;34:1 office's (1) 19:6 Official (3) 4:12;7:18;11:13 old (1) 10:1 once (4) 19:2;21:6;33:4,11 One (36) 4:14,22;6:9;9:2; 10:16;11:15;15:10, 10:16;24;17:2,4,14, 25;18:1,4;19:8;20:25; 21:2;24:16;25:5,19, 21;27:10;28:2;29:9; 30:8;31:13,16,19; 33:3,4;34:24;35:14; 37:3,8,17 ones (1) 33:6 only (7) 12:20;15:23;24:2, 25;32:6;35:25;36:5 opinions (1)	P PAC (1) 18:21 page (1) 37:23 paid (3) 24:16;25:9;35:16 painstaking (1) 14:23 papers (4) 14:14;15:6,7;22:19 paragraph (5) 24:12;25:12;26:1; 27:7;32:6 Park (1) 4:14 partial (1) 17:16 participate (1) 15:17 particular (3) 17:7,10;27:17 particularly (2) 7:6;13:19 parties (13) 7:1;8:12,21,22; 11:18;12:14,19,21; 13:20;14:10;17:18; 18:15;26:18 parties-in-interest (1) 15:3 party (5)

February 16, 2024

25:10;26:20;32:9; 35:10;37:2 passing (1) 14:16 past (1) 18:24 pattern (1) 30:14 pay (2) 12:21;26:12 paying (2) 17:18;32:6 payment (7) 6:22;12:21,22; 24:14;25:1;27:1,8 payments (2) 18:13;23:12 pedantic (1) 31:6 people (20) 9:2,18,24;13:15,16; 16:21;21:2,9,11;22:6; 26:12;30:11,18,20,20; 31:3,22;33:16;34:3; 37:23 perfect (1) 10:9 perfectly (1) 35:3 perhaps (1) 37:20 period (2) 18:14;28:17 permit (1) 29:7 permitted (2) 23:22,22 person (1) 34:6 perspective (2) 29:10,17 pertaining (2) 23:18;24:4 Phil (2) 7:19;14:20 PHILIP (1) 4:17 phone (2) 35:6;36:24 phrase (2) 32:4;35:5 place (1) 11:5 plaintiffs (4) 8:2,5;24:11;28:15 plan (2) 35:1;36:1 playing (1) 30:22 pleadings (2) 8:22;36:20 pleasant (1) 22:23	PM (1) 39:8 point (5) 27:24,25;34:6; 35:13,25 pointed (1) 20:5 points (3) 14:6;23:23;24:2 pop (1) 24:21 popping (1) 25:18 position (2) 19:6;32:21 possible (1) 14:7 post- (1) 12:11 posthaste (1) 34:11 post-trial (1) 23:19 post-verdict (1) 36:1 potential (1) 16:13 practical (2) 12:3;30:10 practitioners (1) 31:9 precedence (1) 30:19 preliminary (2) 8:19;18:4 prepared (4) 12:13;21:2;32:20; 35:25 present (1) 8:16 presented (2) 36:12,17 presentment (4) 6:18;9:13;25:22; 37:19 preserve (3) 29:21;36:2,6 president (1) 18:20 pretty (2) 12:13;31:23 prevent (1) 8:22 previous (1) 35:22 previously (1) 23:7 price (1) 34:4 primary (2) 17:23;31:7 principal (1) 18:16	prior (5) 6:19;18:6;21:10; 28:16;34:10 problem (7) 13:10;20:25;24:17, 22:25;13;26:1;32:2 procedural (1) 30:18 proceedings (1) 39:8 proceeds (1) 23:18 process (3) 14:25;24:22;31:3 PROFESSIONAL (1) 5:10 professionals (4) 6:23;18:13;26:22; 35:6 progress (3) 10:10;13:13;33:23 prompt (1) 31:4 promptly (2) 31:3;32:16 pronounce (1) 10:3 Proposed (8) 4:12;7:20;8:15; 14:21;28:6;32:20; 34:15;35:22 proposes (1) 23:13 provide (5) 16:17;23:13;27:20; 28:13;37:12 provided (6) 14:25;15:9;17:16; 18:8;20:15,22 providing (1) 22:9 public (1) 18:23 pull (2) 29:11,12 pulling (1) 18:7 purposes (2) 12:11;24:9 put (3) 10:25;13:21;21:4 putting (1) 11:24	railroad (1) 31:14 raise (1) 11:19 raised (1) 25:16 read (7) 13:17;15:6;21:17; 22:19,20,20,21 ready (1) 32:25 realize (2) 14:15;36:8 really (4) 7:4;10:11;29:17; 36:18 reason (4) 10:4;12:7;30:13; 34:13 reasons (1) 14:7 receipts (2) 10:19;15:11 receive (1) 15:23 receiving (1) 34:10 recent (1) 24:1 recognize (2) 28:2,3 record (5) 14:20;29:5;31:20; 33:2;36:21 redo (1) 34:18 reduced (1) 8:23 referencing (1) 10:1 reflect (1) 29:5 reflects (2) 31:2,2 regularly (1) 22:25 related (2) 20:18;28:12 relates (5) 15:2;16:14;17:14, 23;37:5 relationships (3) 6:23;13:20;15:2 relief (2) 28:19;32:11 remind (1) 32:16 repeat (1) 31:12 repeated (1) 14:25 repeatedly (1) 16:5	representation (1) 15:14 represented (1) 36:21 representing (1) 18:15 request (5) 6:6;9:21;30:5; 33:19;34:12 requested (2) 15:13;33:4 requests (2) 15:1;31:12 require (2) 9:16;18:12 required (3) 29:14;36:2,6 requirements (3) 21:6,7;30:17 requires (1) 19:1 requisite (1) 30:17 resolve (6) 8:21;12:25;23:6; 25:23;33:5;38:21 respect (14) 15:21,25;16:2,8; 18:4,19,25;23:11,16, 17,21;24:4;26:6; 27:21 respectfully (1) 15:24 respond (2) 31:3;36:13 responding (2) 7:7;30:8 responsive (1) 22:25 retain (1) 6:16 retention (14) 9:15;10:14;12:17; 23:23,24,25;25:7,14; 26:6;28:6,23;29:14; 30:3;31:16 retentions (7) 12:8;25:18;27:3; 33:3,13;37:20;38:22 retracted (1) 32:4 review (2) 23:14;28:9 reviewing (1) 32:23 revised (4) 32:20;34:15;37:9, 12 revising (1) 34:24 rhetoric (2) 22:15;23:2 rid (1)
		Q		
		quick (1) 23:14 quite (1) 10:6		
		R		

February 16, 2024

<p>25:24 right (46) 7:17,22;8:1,6,10,13, 17,19;10:23,24;12:5, 16,24,24;13:7;14:13, 13;18:24;19:12,14, 19;20:11;21:7,17; 22:7,13;26:5;27:2,12; 28:1,22;33:10,15; 34:12,23;35:9,20; 36:8;37:1,1,8,16; 38:19,24;39:1,2 risk (1) 30:15 robe (1) 34:5 role (1) 26:14 rounds (1) 18:8 Ruby (1) 4:3 Rudolph (2) 6:4,12 Rudy (1) 20:25 rule (2) 35:3;36:1 rules (1) 36:6 ruling (1) 33:8 run (3) 24:21;26:16;31:14</p>	<p>12:18,20;23:7,17; 24:3,13;25:1;26:13, 22;27:1,7,8,9 seeking (2) 6:15;32:14 seem (2) 7:5;20:16 seemed (1) 12:8 sense (6) 9:1;10:25;11:18; 13:7;24:18;33:11 separately (1) 25:7 sequencing (1) 14:3 services (1) 23:12 set (3) 7:7;11:6;32:5 Seventh (1) 4:5 share (2) 31:22;33:17 shared (2) 33:21;34:14 ships (1) 14:16 short (1) 9:3 shortly (1) 12:14 shot (1) 33:16 SIBLEY (24) 8:14,15;10:15; 12:17,18,20;15:3; 17:19;18:9,11;23:12, 14,16;24:2,13;26:8, 24;34:18;35:11,11,13, 21;36:12,25 sign (2) 32:23,23 signed (1) 29:8 significantly (3) 8:23;16:9;17:17 simple (2) 16:3;22:11 simply (1) 37:12 situation (4) 11:10;16:19;22:15; 39:4 sketch (2) 36:4,15 slightly (1) 29:4 small (1) 21:2 small-time (2) 21:11,24 smart (2)</p>	<p>21:17;35:5 smoothly (1) 33:24 sole (2) 15:14;19:4 solve (1) 26:1 somebody (3) 20:13;24:21;31:24 somebody's (1) 21:5 somehow (1) 9:8 sometimes (3) 9:9,19,19 soon (1) 39:6 sorry (6) 6:8,8;22:4;28:14; 30:15;31:5 sort (14) 9:6;10:7,19,24,25; 11:2,20;13:21,22; 15:19;19:20;30:8; 31:12;33:11 sought (1) 26:8 source (7) 6:22;24:7;25:15; 26:1,3,4;31:18 sources (5) 15:2;16:15;24:25; 25:10;26:14 Southern (2) 6:3,11 speak (1) 11:23 special (2) 8:15;10:15 specific (4) 15:19;19:7;30:9; 34:19 speech (3) 17:1;31:8,8 spend (2) 17:15;28:6 spoken (1) 11:20 standard (1) 29:14 start (2) 8:19;14:13 starting (2) 7:9;38:7 stated (2) 16:10;18:15 statement (6) 16:3;20:3;22:8; 23:3;24:23;36:22 statements (1) 15:13 STATES (7) 4:20,21;6:3,11;</p>	<p>7:22,25;20:3 status (1) 11:2 stay (10) 6:17,21;12:10,13; 13:1;24:9;28:13,19; 32:24;34:8 step (2) 12:9;28:25 still (2) 7:1;14:22 straightforward (1) 22:10 STRAUSS (3) 4:11;7:20;14:20 strike (4) 13:18;24:23;32:12; 37:13 struck (1) 25:3 stuff (4) 13:22,24;29:23; 33:8 subject (1) 8:15 submit (1) 29:8 substantive (1) 33:22 success (1) 25:20 successful (1) 31:1 sufficient (2) 23:25;28:5 suggest (1) 31:15 suggestion (1) 38:12 Suite (1) 5:13 sun (1) 29:18 superseded (1) 14:16 supplement (1) 33:6 supplemental (13) 9:14;10:7,14,17,20; 11:14;13:12;14:17; 15:8;18:11;24:1,12; 37:4 supposed (1) 25:8 sure (8) 16:6;17:1;19:25; 22:20;35:5,6;36:11; 37:18 surprise (2) 11:8;13:25 surprising (2) 13:19;31:25 suspect (1)</p>	<p>32:7 swear (1) 20:14</p> <hr/> <p>T</p> <hr/> <p>tacks (1) 23:2 talk (4) 9:18;10:11;13:23; 17:4 talked (1) 36:16 talking (3) 13:23;18:1;22:3 tee (1) 13:8 teeth (1) 18:7 telling (2) 27:11;35:4 ten (1) 29:13 tend (1) 23:7 term (1) 23:8 terms (7) 6:21;13:19;14:7; 15:14;30:9;31:18; 39:5 that'll (1) 25:3 thee (1) 17:23 thereafter (1) 23:20 therefore (1) 20:1 thinking (2) 25:2;38:4 Third (7) 5:4;12:19,21;17:18; 18:11;30:12;32:8 third- (1) 25:9 third-party (10) 19:1;24:16,17,24; 25:3,25;26:14;27:12; 32:7;37:13 thought (8) 10:8;11:18;12:25; 13:14;14:2;24:7; 32:15,21 thread (1) 29:1 three (2) 18:8;30:25 thrilled (1) 34:3 throughout (1) 14:25 timeliness (1)</p>
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February 16, 2024

30:17 timely (1) 22:25 time-sensitive (2) 25:19;31:16 timing (1) 34:9 today (9) 7:8;22:19;23:5; 25:4,21,23;28:8;33:8; 34:7 today's (1) 38:20 together (1) 13:12 told (1) 16:16 ton (1) 17:15 took (2) 13:5;30:13 totally (1) 29:6 towards (1) 14:6 transparency (2) 30:17;31:7 treatment (1) 19:22 trial (1) 35:17 trust (2) 16:17;37:6 Trustee (3) 4:21;7:25;38:18 Trustee's (4) 7:23;13:7,10;34:1 trusts (2) 24:3;25:11 try (7) 8:20;11:6;13:11,25; 22:14;30:11;34:2 trying (10) 9:8;11:8,8;12:3; 14:6;19:6,11;30:9; 31:24;38:8 Tuesday (4) 32:18,19,22;35:15 turn (1) 20:9 turns (1) 10:6 tweaked (1) 29:5 twenty (1) 11:15 two (13) 10:7;14:16;18:19; 22:10;24:16,25; 26:20;27:3;29:10; 30:7;32:6;33:3,6 type (1) 27:21	typical (1) 6:23 U ultimately (1) 29:11 unanswered (1) 15:5 under (5) 16:10;20:14;22:11; 29:18;36:6 understands (1) 19:2 understood (3) 19:24;24:10,23 unequivocal (1) 12:23 unfortunately (2) 14:22,25 UNISON (1) 39:7 UNITED (6) 4:20,21;6:3,10; 7:22,25 unless (1) 39:2 unnecessary (1) 30:12 unpack (1) 17:3 Unsecured (1) 4:12 up (9) 10:2;13:8,23;16:25; 24:21;25:18;28:20; 33:25;34:18 upon (1) 12:15 urgency (1) 9:16 used (3) 9:6,8;26:6 V value (2) 26:18;27:7 various (4) 6:16;23:23;24:2; 30:25 verdict (1) 36:4 view (2) 15:7;19:23 virtue (2) 8:23;11:21 voluntarily (1) 33:17 W wait (1)	38:10 waiting (1) 10:8 wall (1) 28:20 Wandrea (1) 4:3 wants (1) 37:21 way (7) 6:9;31:1,14;33:19, 20;34:20;36:14 weaponized (1) 9:6 wear (1) 34:5 week (2) 32:16;38:9 well-worn (1) 21:7 weren't (1) 20:1 Wexler (2) 7:12,15 what's (7) 9:11;11:19;19:22; 24:8;25:11;27:18; 36:15 whenever (1) 9:20 Whereupon (1) 39:8 WILLKIE (2) 4:2;8:4 Wilshire (1) 5:12 wise (2) 34:9;37:17 wishes (1) 8:7 withdrawing (2) 18:16,18 within (5) 13:14;18:13;28:16, 16;36:18 without (3) 24:19;29:6;32:2 witness (3) 21:20,20;22:8 work (6) 9:25;35:14,16,18, 19;38:16 working (3) 7:2;13:10;14:6 works (3) 31:10;32:10;38:18 write (1) 31:8 written (1) 12:20 wrong (1) 32:8	 Y year (1) 15:23 yesterday (2) 11:2;22:20 York (6) 4:6,15,23;5:5;6:4, 11 Z Zoom (1) 16:23 1 10:40 (2) 10:13,20 1000 (1) 5:12 10004 (1) 4:23 10019 (1) 4:6 10038 (1) 4:15 10158 (1) 5:5 11 (4) 6:5,12;7:8;22:23 116 (2) 10:13;15:10 117 (1) 10:14 12:03 (1) 39:8 13th (3) 6:7,14,25 14 (1) 25:12 14th (3) 7:1,3;9:17 1500 (1) 5:13 18 (4) 24:12;26:1;27:7; 32:6 2 2 (1) 34:14 2004 (3) 23:7;30:5;33:18 20th (8) 6:19;9:13;12:7; 25:22;32:16;34:11; 37:25;38:2 26th (1) 38:7 29th (1)	38:3 3 3 (1) 34:14 30th (1) 6:18 31st (3) 9:15;13:22;30:24 341 (1) 16:9 5 50,000 (2) 24:3;26:7 59 (1) 36:1 5th (1) 38:13 6 605 (1) 5:4 7 787 (1) 4:5 9 9 (1) 10:4 9:30 (1) 15:10 9:33 (2) 10:13,16 90017 (1) 5:14
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